



We are publishing this newsletter at a worrying time for all parents, not least those with children with special educational needs. We aim to keep you up to date with the law, both current and changing. Please see page 4 for details of how to sign up for future editions, as well as how to get in touch with the team if you have any specific questions.

These newsletters will have a focus on SEN, which reflects the focus of the team, but may include other aspects of education law as and when they are relevant.

Legislation changes

School Closures

At the time of writing, the entire world is undergoing the first significant pandemic in 100 years, and the global response is not unified. In England and Wales (and Scotland and Northern Ireland), the Coronavirus Act 2020 was passed on 25 March 2020. As well as the Act, the government is regularly publishing guidance for schools, colleges and local authorities.

Effectively, schools were ordered to shut down in March 2020 under the Act, and although there are currently plans (in England alone) for schools to reopen on 1 June 2020, this is on a limited basis (for certain year groups) and for those with an EHC Plan or with complex needs, will be dependent on a risk assessment. Keep an eye on the latest government guidance or on our website for more details as and when these are published.

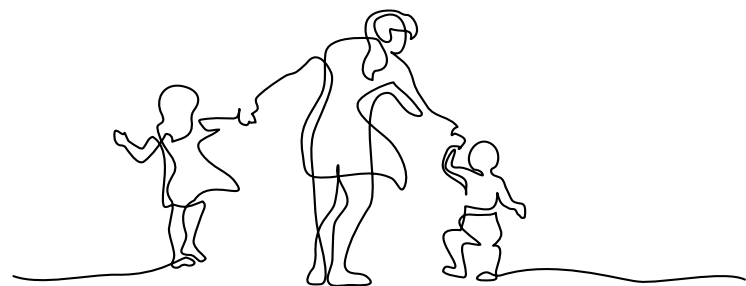
There are some limited exceptions to the closure of schools. Many have retained a skeleton staff to allow the children of key workers and those classed as 'vulnerable' (usually only those with an EHCP, not SEN support) to attend school, and the government is now encouraging those children to go back to school. If your named school is not open, the local authority should be able to guide you as to which school might be available.

Some parents will feel strongly that their child will be disadvantaged by being unable to attend school. Speak to your local authority in the first instance if this is the case, setting out the detriment you feel that your child will suffer. Conversely, some parents may feel that

their child's health could be put at risk if they do attend school. The local authority, along with the school and the parents, should be undertaking a SEN risk assessment to establish this. The guidance is clear that ultimately, it is a decision for the parents about whether it is safe for their child to return to school.

Also under the Coronavirus Act 2020, a notice has been issued by the Secretary of State for Education modifying s42 of the Children and Families Act 2014, and amending the Special Educational Needs and Disability Regulations 2014. Blog posts on our website have more details about these amendments. Essentially, these mean that local authorities are no longer under a duty to provide special educational provision as listed in section F of an EHC Plan – they simply need to undertake reasonable endeavours to provide it.

Additionally, the statutory timescales in relation to many aspects of EHC Plans have been relaxed. Government guidance is clear that despite this, local authorities need to be flexible in imagining how they can provide education in these difficult times. If you have any ideas on how you could provide support to your child, you could request a Direct Payment to commission the education yourself.



<https://www.gov.uk/government/publications/coronavirus-covid-19-implementing-protective-measures-in-education-and-childcare-settings/coronavirus-covid-19-implementing-protective-measures-in-education-and-childcare-settings>

<https://www.gov.uk/government/publications/coronavirus-covid-19-send-risk-assessment-guidance/coronavirus-covid-19-send-risk-assessment-guidance>

<https://www.qualitysolicitors.com/moore-tibbits/news/2020/05/ehc-plans-relaxed-during-covid-19-pandemic>

<https://www.qualitysolicitors.com/moore-tibbits/news/2020/05/ehcp-timescales-amended-during-covid-19>

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News

The government has made more than £37million of grant monies through the Family Fund available to low-income families of children with complex needs and disabilities. Typically, it is expected that a grant will be worth £400 - £500 per family but can vary. £10million of this money has specifically been allocated to alleviate difficulties families are facing in educating and looking after their children during the current public health pandemic.



Go to <https://www.familyfund.org.uk/> to see if you are eligible or to apply for a grant

Ombudsman decisions

The Local Government and Social Care Ombudsman is currently closed to new complaints concerning local authorities and care providers, but publishes their decisions three months after they are decided.

19 000 747 against Derbyshire County Council – the Local Government and Social Care Ombudsman found fault with Derbyshire County Council for failing to make suitable alternative education arrangements for a young woman who stopped attending school in February 2018 due to her anxiety.

Local authorities are under a duty under s19 of the Education Act 2006 to arrange suitable education for pupils who are unable to attend school because of illness or other reasons. They would otherwise not receive a suitable education. This is defined under the Children, Schools and Families Act 2010 as full-time education unless the physical or mental health of the child means that this is not in their best interests. A local authority should provide education after 15 days of a child being away from school.

In this decision, the parents also complained about the contents of their daughter's EHC Plan, but the Ombudsman cannot decide this because there is an alternative remedy available (the Tribunal). Miss Z has physical health issues affecting her movement and was

attending mainstream school but stopped because of her anxiety. The local authority claimed that the school sent her work home, but the Ombudsman could not find evidence of this. They did not provide any other Miss Z's parents quickly requested support from the local authority. There was no medical evidence that Miss Z's anxiety was actually preventing her from attending. In fact, the parents were originally investigated for her unauthorised absence, although this was shown to be unfounded. Her school persistently said that they did not have the skills to educate her and her father eventually had to leave his job to help his daughter.

The Ombudsman found that the local authority was incorrect to rely on the fact that there was no medical reason that Miss X was not attending school for the reason why they did not provide home schooling – this is not the wording in the legislation. The statutory guidance is clear that local authorities also have to consider 'other evidence' which would have included the evidence from both Miss Z's parents and her school.

The Ombudsman ordered the local authority to pay Miss Z £2,000, which is towards the top end of what they could award. They will also need to review their processes in assessing those out of school to provide alternative provision for education under s19 of the Education Act 2006.

Other information

Of course, we are going through a difficult time as a country and globally at the moment. However, the right to an education is a fundamental human right. Ultimately, the changes brought in during this crisis are narrow. Local authorities are still under a duty to attempt to educate children and the vast majority of their statutory duties remain in place. If you are concerned about the current status of your child's education, including in relation to transition, any upcoming reviews or anything else, please do get in touch with a member of the team.



To keep up-to-date with education law and changes in legislation, sign up to our free newsletter by emailing Esme: esme@moore-tibbits.co.uk. You can opt-out at any time.

Post us your questions

We want to be able to answer as many queries parents may have and we would therefore be grateful if you could "post us your questions" to education@moore-tibbits.co.uk

We can then get back to you and publish the most common queries in our next newsletter.



FREE Friday*

Call us on **01926 354304** to book your **FREE** 20 minutes consultation. *Or any other day!

Since the launch of our education team, we had been focusing on Warwickshire but the coronavirus pandemic has shown that we have no geographical boundaries. With the use of video-conferencing facilities, the team have continued to seamlessly support our clients not only within Warwickshire but also those who are getting in touch with us from further afield.

Watch this space...

We understand that not everyone wants to read reams of information and we are therefore going to shortly be launching our video series on education.



MY CHILD NEEDS HELP!

- Are you struggling to get the right care and support for your child?
- Do you wish to challenge your child's Education, Health and Care plans (EHC)?
- Has the direct payment you receive for your child's social care been reduced?
- Is your child transitioning to adult social care?
- How can you protect your child's financial future?



Contact the team today on
education@moore-tibbits.co.uk or call **01926 354704**

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How can we help?

Education

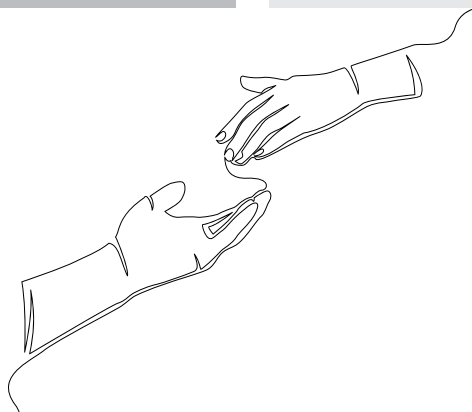
- Assisting with requests for Education, Health and Care assessments
- Appealing and/or challenging a decision not to carry out an Education, Health and Care assessment
- Assisting with disputes over the contents of an Education, Health and Care plan and funding arrangements
- Representation at Special Educational Needs and Disability Tribunal
- Other issues relating to your client's education including transport, exclusions and admissions
- Transitioning: ensuring your client receives the appropriate support when they reach 18 and beyond!

Health

- The continuing healthcare process
- Eligibility for continuing healthcare
- Appeals of decisions
- Challenges
- Annual reviews
- Retrospective Applications
- Personal health budget and care plan disputes

Community Care

- Community care assessments of needs
- Challenging the outcome of community care assessments
- Failure by the Local Authority to provide services
- Disputes about personal budgets and direct payments
- Transition assessments
- Best interest disputes including issues concerning deprivation of liberty






Our success

Jamie Strong, a solicitor in the education team attended an education review meeting for a child who hadn't been at school for over 6 months. Jamie managed to secure a placement for the child at a bespoke special needs school where he will now receive one to one education. Brilliant result for our client.

We hope everyone remains safe and well during these challenging times,
The education team at Moore & Tibbits

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